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May 19, 2009

Dr. Roy E. Crabtree
Regional Administrator
Southeast Regional Office
National Oceanic and Atmospheric Administration
263 13th Avenue South
St. Petersburg, Florida 33701

Subject: EPA NEPA Comments on NOAA FEIS for "Amendment 29 to the Reef Fish Fishery Management Plan"; Commercial Grouper and Tilefish; Gulf of Mexico Fishery Management Council; Gulf of Mexico; CEQ No. 20090140; ERP No. NOA-E91024-00

Dear Dr. Crabtree:

Consistent with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed the National Oceanic and Atmospheric Administration's (NOAA) Final Environmental Impact Statement (FEIS) for Amendment 29 to the Reef Fish Fishery Management Plan (FMP). The FEIS was prepared for NOAA by the Gulf of Mexico Fishery Management Council (Council). This amendment concerns the overcapitalized commercial grouper complex (multi-species) fishery in the Gulf of Mexico (GOM), which has resulted in derby-style fishing to fill the quota. Amendment 29 provides numerous alternatives to manage the overcapacity of the fishery based on an Individual Fishing Quota (IFQ) program or through permit endorsements. EPA previously provided comments on the Draft EIS (DEIS) in a letter dated August 12, 2008.

EPA supports the restoration of the grouper complex fishery. Our main focus for this and most fishery recovery programs is a rapid restoration of the resource. However, at the same time, we are also aware that fishers leaving the fishery under duress or having to reduce their fishing infrastructure (vessels, gear, etc.) can be expected to be a hardship on most commercial fishers (unless such investments can be re-targeted to other fisheries that support larger stocks and optimum yield harvests). This would particularly be true if hardship cases included Environmental Justice (EJ) commercial fishers (i.e., low-income and/or minority fishers) that may be substantively affected by the new fishery management regulations.

Although perhaps difficult to determine for fishers, the inclusion of EJ information is still important to the impact assessment of a fishery EIS, consistent with

Executive Order 12898. For most fisheries, we agree that NOAA regulations could impact all fishers similarly in terms of their fishing technique and landings; however, there could still be demographic differences associated with the resultant societal impacts. That is, if low-income fishers become unemployed due to new fishery restrictions, they may be more impacted than other fishers that are economically better off, or those that have or can find additional employment within the industry or elsewhere. Also, for fisheries with one and the same quota for fishing grounds located along several latitudes, some latitudes may be more impacted than others unless seasonal quotas are established. The NOAA Record of Decision (ROD) for this EIS should therefore further attempt to determine and disclose EJ information for the commercial tilefish and grouper fishery and discuss its relevance to the fishery. In addition to information collected, remaining uncertainties and informational gaps regarding demographics should also be documented in the NEPA document.

As was the case for the DEIS, EPA continues to support Amendment 29 overall. For the review of the FEIS, we have emphasized NOAA's responses to our comments on the DEIS found in Appendix C on page 297. The responses to EPA comments were generally adequate; however, the rationale given for not providing EJ information was not helpful and does not change the potential for societal impacts. That is, it was stated that the "...NOAA Fisheries Service has no information on the race and ethnicity, gender, and income of fishermen or others involved in the fishery industry." The responses further stated that:

Available data does not allow the determination of whether the characteristics of affected fishery participants trigger environmental justice considerations and the need for special mitigation measures to respond to environmental justice concerns. Nevertheless, the proposed actions would apply equally to all fishery participants regardless of minority or income status and no information has been identified that would indicate differential costs or benefits to minority or low income persons distinct from those expected to accrue to other constituencies involved in the fishery. Therefore, no environmental justice issues have been identified and no mitigation measures in response to environmental justice issues have been considered.

EPA assumes that an approximate income level for fishers in the commercial tilefish and grouper fishery can be reasonably estimated from the industry, and compared to state poverty levels to determine possible low-income status. We agree that determining fishery demographics could be more difficult. However, the demographics from U.S. Census data for block groups incorporating fishing villages (e.g., as cited in the responses, 147 coastal cities were considered relevant for this fishery) and/or the three targeted cities (Madeira Beach, Panama City and Port Isabel in FL and TX) might also be helpful in determining the potential for low-income and minority fishers. Even though not all of the census population would be fishers, the demographics of the area (in the absence of better published data) may be reasonably indicative of fisher demographics as well – especially for small villages.

Because specific published information directly related to the fishers is limited, perhaps the best source of demographic information is direct outreach to the fishing communities and organizations for this fishery. Such information might be generated for a few of the fishing villages considered representative in the Gulf states involved. Outreach could be coordinated through community leaders/churches or through announcing and holding town meetings. Also, the level of participation by potentially impacted minority and low-income commercial fishers is unclear for the completed NEPA scoping meeting(s) and the ongoing public comment process. What efforts were made to secure input and participation from potential EJ populations along the GOM coast within the project area?

If potential EJ impacts are identified, mitigation should be considered as appropriate. One approach to mitigation is the consideration of hardship cases arising from the proposed reduction of the fishery overcapacity. However, we note from the responses that “the Council chose not to consider hardship arguments during appeals.” While we agree with this approach from a strict rapid recovery perspective of the fishery resource, hardship cases would likely relate to societal issues – including EJ – due to the proposed fishery measures that might best be considered. Even if the above demographics of the overall fishery may be difficult to determine, the demographics and societal issues of fishers claiming hardship cases should not be difficult to determine and could provide a snapshot for EJ and other societal impacts resulting from the proposed fishery regulations. Regardless of demographics, however, thresholds defining hardships would need to be strictly documented to qualify for any relief. Such offsets could be in the form of assisting hardship fishers in selling their fishery vessels/gear and/or in finding new employment in another local fishery that is not over-exploited, or in other occupations for which they qualify.

In summary, it is important that the EIS process (ROD in this case) disclose the potential for disparate impacts to minority and low-income populations. Several options appear to exist for NOAA to obtain income and demographic information for fishers in the commercial tilefish and grouper fishery to determine societal impacts and to potentially provide assistance to impacted fishers of low-income, minority and other demographics:

- * The commercial fishing industry for representative fisher income levels;
- * U.S. Census data for block groups incorporating representative fishing villages;
- * Direct outreach to representative fishing villages;
- * Consideration of hardship cases impacted by the proposed fishery measures.

We appreciate the opportunity to review the FEIS. We also request receiving a copy of the NOAA ROD. Should you have questions regarding these comments, feel free to contact Chris Hoberg of my staff at 404/562-9619 or hoberg.chris@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Heinz J. Mueller". The signature is fluid and cursive, with the first name "Heinz" and last name "Mueller" clearly distinguishable.

Heinz J. Mueller, Chief
NEPA Program Office
Office of Policy and Management

cc: Dr. Rodney F. Weiher
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